but also as a condition precedent, whether the issue is within the terms of the treaty already made?"

If you are willing and have the right to sanction the arbitration of questions that involve the national honor, as you did in the famous Alabama case or the recent Newfoundland fisheries case, there can be no possible constitutional reason why you cannot agree to give your sanction to arbitrate *all* such *cases in the future.* There is no constitutional difference between making a special and a general treaty.

Thus the only question before you is this: Is the United States ready yet to arbitrate all disputes that may arise between herself and England and France? Mr. Taft and Mr. Knox say yes, our leaders of thought and action say yes, the whole country says yes.

A golden opportunity, therefore, lies before you. The imperishable honor of leading with President Taft in the movement for the abolition of what Thomas Jefferson called "the greatest scourge of mankind" is within your grasp. Unlimited arbitration is the beginning of the end of war.

Let the treaties, therefore, be ratified at the present session. The moral and material benefits which will accrue to our nation and to all mankind for this leadership in the cause of the ages will be beyond human computation.

The General Arbitration Treaty.

IS IT CONSTITUTIONAL?

From the Outlook.

The General Arbitration Treaty provides that all differences arising between the high contracting parties, which are susceptible of decision by the application of the principles of law or equity and which cannot be settled by diplomacy, shall be referred to the permanent Court of Arbitration at the Hague, or to some other arbitral tribunal as may be decided in each case by special agreement, and that the special agreement in each case shall be made on the part of the United States by the President, by and with the advice and consent of the Senate. And it further provides that, in cases in which the parties disagree as to whether or not a difference is subject to arbitration (that is, whether it is susceptible of decision by the application of the principles of law or equity), that question shall be submitted to the Joint High Commission of Inquiry, composed of three "nationals" from each nation; and if all but one of the commissioners decide that the question is susceptible of such decision, their decision shall be binding on both the nations. The Constitution of the United States provides that the President shall "have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." The majority report of the Senate Committee on Foreign Relations, presented by Senator Lodge, holds that the clause in the General Arbitration Treaty referring to the Joint High Commission, with power to settle it, the question whether any particular issue arising between the United States and Great Britain is susceptible of decision by the application of the principles of law or equity, is inconsistent with this provision of the Constitution. "The committee believes that it will be a violation of the Constitution of the United States to confer upon an outside commission powers which, under the Constitution, devolve upon the Senate. It seems to the committee that the Senate has no more right to delegate its share of the treaty-making power than Congress has to delegate the legislative power." The minority report of the Senate committee, presented by Senators S. M. Cullom and Elihu Root, and approved also by Senator Theodore E. Burton, holds that there is in this proposed treaty nothing inconsistent with the Constitution. "We see no obstacle to the submission of such a question to decision, just as any other question of fact, or mixed fact and law, may be submitted to decision. Such a submission is not delegating to a commission power to say what shall be arbitrated; it is merely empowering the commission to find whether the particular case is one that the President and Senate have said shall be arbitrated."

Upon such a question the laity may well be governed by the authority of three such lawyers as President Taft, Secretary Knox, and Senator Root. But in this case the people need not rest their judgment wholly upon authority. The judgment of these eminent lawyers is abundantly sustained by principle and precedent easily understandable by the non-professional mind. There may be a difference of opinion whether, under the treaty, the three representatives of America on this Joint High Commission would be appointed by the President alone, or by the President by and with the advice and consent of the Senate. We think the advice and consent of the Senate should be secured, but any ambiguity upon this point could easily be removed by amendment if amendment is necessary.

The President and the Senate have a constitutional right to refer any specific question to arbitration. No one doubts this. The right has been exercised too often to be called in question. They have a right to refer any class of questions to arbitration. This right has also been exercised, first by a General Arbitration Treaty with the South American Republics, ratified by the Senate in 1905; later, by a General Arbitration Treaty with Great Britain, ratified by the Senate in 1908, though in this latter treaty the Senate reserved the right to advise and consent to the act of the President in determining whether any specific question came within the exceptions provided for in the treaty. If the President and the Senate have a right to refer each question as it may arise, or, by general treaty, a group of questions, they have the same right to refer all questions. If, in the proposed General Arbitration Treaty with Great Britain, it were simply provided that all differences hereafter arising between the high contracting parties, which it had not been possible to adjust by diplomacy, should be submitted to the permanent Court of Arbitration at the Hague, no one could question the right of the Senate to confirm such a treaty. The real question, and the only question, presented by the majority of the Senate Committee on Foreign Relations is whether, in case general exceptions are made to the Arbitration Treaty, the Senate must, as a body, pass on each question which arises, in order to determine whether it comes within the specified exceptions.

The argument of the Senate committee that "the Senate has no more right to delegate its share of the treaty-making power than Congress has to delegate the legislative power," is really, in the light of the prece-

dents, an argument against its contention that the present treaty is unconstitutional. Congress cannot delegate its legislative power to the President, but it can delegate to the President power to determine when and how a law, general in its provisions, shall be applied. We quote from an editorial on this subject in the *Outlook* of March 4, 1905:

"It is established, both by congressional precedents and by the decisions of the Supreme Court of the United States, that it is constitutional to delegate to the President power:

"To establish or remove an embargo.

"To admit specified articles free of duty, and to reimpose the duty.

"To prohibit the importation of cattle if such importation is perilous to public health, and to remove the prohibition.

"To suspend or to reimpose tonnage duties.

"To waive or to put into effect provisions of a treaty prescribing judicial proceedings for American citizens in a foreign country.

"To agree with a foreign nation what plans for sanitation are adequate.

"To agree with a foreign nation what sites for coaling or naval stations are satisfactory.

"To enter into agreement with a foreign nation in the selection and constitution of a court of arbitration.

"To enter into agreement with a foreign nation in determining whether a special case shall be submitted to a general or to a special court."

In the light of these precedents, it seems to us clear that the Senate has a right, if it chooses to exercise it, to make a general agreement with Great Britain to refer all cases, with one exception, to the General Court of Arbitration, and to leave a Joint High Commission, composed in equal parts of nationals from each nation, to determine whether any particular controversy comes under the one exception provided for in the treaty.

IS IT DESIRABLE?

The *Outlook* has in preceding articles described how the proposed General Arbitration Treaty would work in a given case, and stated the reasons for its belief that the Senate has a constitutional right to make such a General Arbitration Treaty. In this article we consider the question, Is such a treaty desirable? The *Outlook* answers this question in the affirmative. It thinks such a General Arbitration Treaty is desirable; it thinks the treaty is constitutional; and it is inclined to believe (though only experiment can give certitude on that question) that no exigency is likely to arise in which it would fail to achieve its beneficent purpose.

We consider this General Arbitration Treaty as one between the United States and all civilized powers. We regard it as of vital importance that any general arbitration treaty with Great Britain should be so framed as to serve as a safe model for similar treaties with other great world powers, including Japan. In an editorial on this subject in the *Outlook* for June 17 last we stated the reasons for this conviction, and need not repeat them here. That the President is of this opinion is indicated by the fact that he has already invited Japan to join in a similar treaty.

If some Americans doubt whether such an agreement is desirable, it is because over-ardent advocates of peace have claimed too much for international arbitration. Such a treaty as this does not secure world peace. It is not its object to secure world peace. President Taft has said explicitly to Americans, Earl Grey has said equally explicitly to Englishmen, that this treaty will accomplish no such result. If this were its object, the *Outlook* would not approve it. We do not approve making promises that cannot be fulfilled, nor professing to secure objects which the means proposed are manifestly inadequate to secure. We approve this treaty, not because it will *insure* world peace, but because it will *promote* world righteousness.

. . . . . .

The question, then, is not whether the International Arbitration Treaty will secure a world peace. The question is this: Has civilization made such progress that most questions which arise between civilized powers can be so settled by judicial proceedings as to promote righteousness more effectively than it is, or can be, promoted by war? Has the development of the reason and the conscience been carried far enough in Christendom to make it practicable to substitute in most controversies between civilized powers the appeal to reason for the appeal to force?

It is the first duty of every government to protect its citizens from injustice, whether that injustice is threatened by foreign powers or by domestic criminals. If it fails to furnish such protection, it fails in its fundamental duty and has no adequate reason for its existence. The real question presented by this international treaty is this: Can the United States better fulfill this duty, better protect the rights of its citizens from foreign wrong-doing, by appealing to an international court of justice than by appealing to arms?

Not all wars in the past have been wrong; not all international questions in the future can be settled by a court of justice. Our Declaration of Independence declares that there are inalienable rights. There are also inalienable duties. There are purely American questions which America would not be willing to submit to European tribunals, because there is not at present developed a sufficient world consciousness to give us assurance that a European tribunal would understand a purely American question. Probably all questions of merely national interest might well be submitted to a judicial tribunal; but not all questions of national duty. The proposed arbitration treaty will not secure world peace, but it will make the peaceful settlement of disputed questions a little easier. It will not secure world righteousness, but it will make world righteousness a little more probable. There were many questions in the past which could not have been settled by arbitration. There may be such questions in the future. But in the great majority of cases likely to arise between civilized nations the appeal to reason would further the cause of righteousness better than the appeal to force. And civilization has progressed far enough to make the experiment of a general reference to arbitration practicable, leaving such exceptional cases as may arise for exceptional treatment.

The General Arbitration Treaty of 1911 marks no great advance over the General Arbitration Treaty of 1908. But it re-emphasizes the principles involved in that treaty, and in so far is an advantage. The apprehensions of the majority of the Senate committee, that

such a treaty would raise questions which are now at rest, seem to the *Outlook* needless apprehensions. The treaty is so carefully framed as to avoid the danger that under it America might be forced into a dishonorable peace, or into a breach of the treaty in order to avoid a dishonorable peace. The *Outlook* believes that the Senate committee has the constitutional authority to make such a treaty, and that if the American people understand the meaning of this treaty and deliberately make its purpose their own, the treaty will make both for peace and for righteousness. It will not do all that some of its enthusiastic advocates claim for it, but its adoption will do some good and can do no harm.

Line-up for the Peace Treaties.

From the Homiletic Review.

Whether the arbitration treaties with England and France should be ratified will be the great question before the Senate next winter. It is now before the great and general court of public opinion. The line-up on each side has already begun as follows: for the treaties as presented, two hundred chambers of commerce, numerous university and college professors, a host of clergymen of all denominations, many groups of churches, and a multitude of business men. Against the treaties, chiefly some societies of citizens who have brought over from Ireland and Germany an inherited animosity against England or France. With these a majority of the Senate Committee on Foreign Relations has on other grounds declared its opposition, and this in discourteous disregard of the President's request to postpone its report till Congress meets in December. It is well that its opposition has been unmasked thus early; its essential weakness will be the sooner exposed at the bar of public opinion. Each treaty provides that if either nation thinks a disputed question not "justiciable," *i. e.*, not one to be settled in a court of justice, this point shall be referred to a joint high commission of six—three from each nation—and if five of these agree that it is justiciable, it shall be referred to the Hague tribunal for decision. This the Senate's committee pronounces an unconstitutional delegation of the treaty-making power to outsiders. This contention has been exploded in a page of *The Independent* by Governor Baldwin, recently the Chief Justice of Connecticut, and still professor of law in Yale. The opinions of the Supreme Court and the acts of Congress which he cites leave no shadow of doubt on his conclusion: "It is not delegating, but rather exercising, their treaty-making powers." Especially forcible is his reference to the fact that for nearly forty years the Postmaster-General has been authorized to conclude postal treaties with consent of the President only. Of the seven names signed to the adverse report, not one is of equal weight in constitutional law with Governor Baldwin, or with the President himself, and the Secretary of State, Mr. Knox. The other senatorial objection to the treaties, that they "breed war," deserves ridicule more than argument. What a mare's nest is the notion that England or France might use the proposed treaty to challenge the Monroe Doctrine, and then, that two of the three Americans in the Joint High Commission might agree with them to refer it to the Hague tribunal. Not to regard such objections as disingenuous as well as frivolous, large charity is needed. It is hard not to believe that sundry Senators would rather have the treaties fail than have Mr. Taft, as a candidate next year for the Presidency, gain prestige by their ratification. But faith in the essential reasonableness of human nature, even under temptation to unreason, forbids fear lest perverse objections win the day. Now is the time to call out all the reserves, and to mass the forces of reason, of commercial interest, and of religion, for treaties that fasten fresh nails in the coffin of the accursed murderer, war.

Brief Opinions of Prominent Men.

Governor Mann, of Virginia.

In my judgment the Senate of the United States never faced a more important issue and never had a greater opportunity for world-wide service than that presented by the arbitration treaties negotiated by President Taft between this country and Great Britain and France. That these treaties should be approved and ratified by the Senate is the opinion of a large majority of the best people of America; that there should be the slightest hesitation in taking so great a step for peace on earth is a matter of surprise.

It is peculiarly appropriate that the United States should initiate this action. Isolated by their geographical situation from the contending great powers, protected by an imposing navy, and by unlimited resources, secure in the strength of a vast, intelligent citizenship capable of bearing arms, the United States can well afford to lead the world toward peace and amity.

Every question of difficulty between nations, be it great or small, has its origin in some minor controversy. The prompt arbitrament of these questions will avert an issue of national honor.

Senator George Sutherland, of Utah.

I favor the ratification by the Senate of the general arbitration treaties with Great Britain and France, without any change in the proposed text.

I am unable to agree with the contention that the provision in Article III will constitute a delegation of the treaty-making power of the Senate. Such provision is not a delegation of the power to participate in the making of a treaty, but only of a power to say whether or not the facts of the given case fall within the rule laid down by a treaty, already made with the advice and consent of the Senate. This is no more a delegation of the treaty-making power than is the authority conferred upon the Interstate Commerce Commission to determine whether transportation charges exacted by a railway company fall within the statutory rule that all rates shall be reasonable and non-discriminative a delegation of the law-making power.

Congress may not delegate the power to make a law, but may make a law which confers a power to determine whether a given state of things falls within the operation of the law.

Neither can I agree with the contention that this provision is unwise or attended with any circumstances of peril, in view of the fact that the personnel of the